

## **GLOBAL HEALTHCARE EXCHANGE TERMS AND CONDITIONS GHX PROVIDER EPAY**

By executing a Statement of Work or Order Form (referred to collectively herein as the "SOW") referencing these Global Healthcare Exchange Terms and Conditions GHX Provider ePay, you ("User") agree to be bound and abide by the terms and conditions herein ("Terms and Conditions"). Each party may be referred to herein as a "party" and collectively as the "parties." All references to User are deemed to include User's Affiliates, as defined in the Agreement between User and GHX, defined in the SOW. These Terms and Conditions are intended to supplement the Agreement and in the event of a conflict between these Terms and Conditions, the Agreement and the SOW, these Terms and Conditions will govern, followed by the Agreement and the SOW.

- 1. GHX Appointed as Agent for Submitting and Processing of User Payments.** User hereby appoints GHX, or its designee, to be its authorized agent, to provide the Services as a third party processor of payables transactions (each a "Transaction") via the System in accordance with the operating rules of the National Automated Clearing House Association ("NACHA Rules") available here [www.nacha.org](http://www.nacha.org), the applicable U.S. Federal laws and regulations governing the Services (the applicable NACHA Rules and the applicable U.S. Federal laws and regulations shall herein be referred to as the "Rules or Regulations").
  
- 2. User Obligations.**
  - a. General.** User shall (i) comply with all reasonable operating instructions on the use of the Services provided by GHX which are consistent with the Agreement, SOW, the GHX Terms of Use and the GHX Acceptable Use Policy; (ii) promptly review all reports furnished by GHX for accuracy; and (iii) work with GHX to reconcile any out of balance conditions or discrepancies and promptly inform GHX representatives when such discrepancies are not being resolved on a timely basis due to a continuing difference of opinion involving a material (as reasonably determined by User) dollar amount between User and the participating vendors ("Participating Vendor(s)"). GHX will use commercially reasonable efforts to work with the parties to address and attempt to resolve the dispute. User shall determine and be responsible for the authenticity and accuracy of all information and data submitted to GHX by User. User shall be responsible for the completeness and accuracy of all business rules settings established by User and for complying with the applicable merchant services agreements for virtual card and credit card acceptance, as applicable.
  
  - b. Responsibility for Acts of Others.** User is responsible for all advice from, acts of, as well as omissions, acts of fraud or acts of misconduct by User's employees, processors, advisors, contractors, agents, officers and directors, specifically excluding any acts or omissions of GHX and any Participating Vendors, defined in the SOW, with which User does business. Any disputes regarding the goods or services provided by Participating Vendors to User which are unrelated to the System or this SOW shall be resolved between User and the applicable Participating Vendor. Although GHX will use commercially reasonable efforts to work with the User and such Participating Vendors to address and attempt to resolve disputes, GHX will not have any legal responsibility for such disputes unless such dispute is related to the breach of this SOW or the System or matters arising out of this SOW.
  
  - c. ACH Authorization.** User will provide GHX with ACH authorizations in a form compliant with the Rules or Regulations. GHX will maintain records of User authorizations as necessary to resolve disputes and, where applicable, process corrections or reversals.
  
  - d. Identifying Numbers.** User understands that GHX may rely solely on identifying numbers provided by User to determine the financial institution or bank and account of User even if the numbers identify an account holder different from the one User identified by name.
  
  - e. Regulatory Compliance.**
    - i.** User bears the final responsibility to ensure that the User's policies and procedures and the Entries meet the requirements of the Rules and Regulations. User is encouraged to consult its legal counsel regarding compliance of authorization and payment procedures whenever there

is any doubt about compliance. User agrees to regularly and promptly review all Entries and other communication sent by or from User and to immediately notify GHX if User discovers any discrepancy between its records and those provided by GHX or User 's bank, or with respect to any Transaction that User believes was not authorized by it. If User fails to notify GHX within fourteen (14) calendar days after the date of payment or other report of activity to User, GHX has no obligation to investigate.

- ii. User represents that neither it, nor any of its Affiliates, nor its' nor their officers, employees or agents are listed on any Specially Designated Nationals ("SDN") list of the U.S. Department of the Treasury the Office of Foreign Assets Control ("OFAC"), or are now or have been in the past, part of any investigation or action, by the Federal Trade Commission, FBI, or U.S. Postal Authority or any other governmental authority whether inside or outside the jurisdiction of the United States.
- iii. Furthermore, User agrees to be responsible and liable for any use, whether authorized or unauthorized, of the Services on behalf of User hereunder. For greater certainty, User shall not permit any individual to use the Services unless they are: (a) employees or agents of User; (b) acting for and on behalf of the User; and (c) acting in the ordinary course of business of the User. The User hereby authorizes GHX and its representatives to obtain from third parties financial, credit and background information relating to User to assist GHX in its determination of whether to accept this SOW and its continuing evaluation of the financial and credit status of User for the entire term hereof.
- iv. User shall inform GHX immediately of any adverse circumstances or developments impacting User's business or the financial condition of User. Upon learning of such adverse circumstances, User agrees to immediately stop processing Transactions (except as otherwise permitted by GHX) until GHX can make a determination on the viability of User's relationship with GHX. User also agrees and understands that the withholding of said information could be harmful to GHX or its originating depository financial institution ("ODFI"), and User will be liable to GHX and its ODFI for any or all damages resulting from such withholding.
- f. **User Indemnification.** The following indemnity obligations supplement any and all indemnity obligations between User and GHX, with respect to the Service covered by an SOW. User shall hereby indemnify and protect, defend and hold harmless GHX and its ODFI, and their officers, officials, agents, employees and counsel and their respective heirs, administrators, executors, successors and assigns (each of the foregoing, an "Indemnified Party"), from and against, any and all losses, liabilities, claims, damages, interest, judgments, costs, or expenses, including without limitation fees and disbursements of counsel, incurred by any of them arising out of or in connection with or by reason of this SOW, the Entries, Transactions, the provision of the Services hereunder, incorrect account or other identification in an Entry, defined below, or otherwise, or any breach of Rules or Regulations, any breach of any applicable merchant services agreements or User's representations, warranties or covenants set forth herein (collectively, "Losses"), except only that User shall not be required to indemnify GHX for any Losses to the extent such Loss is finally determined by a court of competent jurisdiction to have arisen solely out of the gross negligence or willful misconduct of GHX.

### 3. GHX Obligations.

- a. **Access to Data.** GHX shall provide User with information reasonably requested with respect to any payment issues or other disputes arising out of this SOW. During the term of this SOW, User shall have access to Transaction Data, defined in the Agreement, via the GHX website portal.
- b. **GHX Personnel.** In performing the Services hereunder, GHX shall only utilize personnel with satisfactory background checks and no personnel providing such Services: (i) are on the List of Excluded Individuals/Entities maintained by the HHS Office of Inspector General pursuant to 42 U.S.C. Sections 1320a-7, 13955ccc, 1320c-5 and regulations promulgated thereunder, which, as of the Effective Date, is located at <http://oig.hhs.gov/fraud/exclusions.html> (the "OIG List"); (ii) are

on the Excluded Parties List System maintained by the United States General Services Administration which, as of the Effective Date, is located at <http://epls.arnet.gov> (the "GSA List"); (iii) are listed as a Specially Designated National or Blocked Person on the U.S Treasury's Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons which, as of the Effective Date, is located at <http://www.ustreas.gov/offices/enforcement/ofac/sdn> ( the "SDN List"); or, (iv) have been convicted of a felony or entered a plea of nolo contendere with respect to a felony charge. GHX will promptly inform User if it or personnel providing Services should come to be included on the OIG List or the GSA List or SDN List.

- c. **Compliance and Reimbursement Reporting.** GHX will: (i) adhere to all Rules and Regulations in the performance of this SOW; and (ii) treat and report for all purposes, including without limitation, Medicare and Medicaid reimbursement purposes, any rebates representing a portion of the Negotiated Discounts provided to User by GHX as a discount from the prices set forth on the corresponding invoices from the applicable Participating Vendor to User.
- d. **Accepting and Originating Transactions.** GHX will accept online Entries from Users via electronic transmission on a 24-hour basis, or office delivery during normal business hours of GHX. GHX will use the information provided by User to originate Entries to the ACH. User understands that GHX may reject Entries or delay or decline to originate a transaction for any reason such as those permitted or required in the Rules or Regulations. User also understands that an Entry may be rejected by GHX or its origination may be declined or delayed if the Entry would cause GHX to violate any U.S Federal Reserve or other regulatory risk control program or any other law or regulation. GHX will have no liability or responsibility for any of the aforementioned rejections, declines or delays.
- e. **Settlement.** In the event there are not sufficient funds in the User demand deposit account ("DDA") to cover User's obligations under this SOW, User agrees to pay GHX the amount of the deficiency on demand in immediately available funds. GHX may debit any account maintained by User, such as for example the User DDA, without further notice to or approval from User. Any Credit Entries (as such term is defined under the NACHA Rules) that User creates will be debited from the User DDA in accordance with the hold period prior to the credit being distributed to User's Participating Vendors' accounts. In the event that the Debit Entry (as such term is defined under the NACHA Rules and, collectively with the term Credit Entry, shall be referred to as an "Entry") is returned for any reason, the Credit Entries will be cancelled due to the unavailability of funds.

#### **4. Limits of Liability and Disclaimers.**

- a. **THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SET FORTH IN THIS SECTION TITLED "LIMITS OF LIABILITY AND DISCLAIMERS" SUPERSEDES ANY AND ALL LIMITATIONS OF LIABILITY AND DISCLAIMERS BETWEEN USER AND GHX AND SHALL APPLY TO THE SUBJECT MATTER HEREIN. GHX WILL BE RESPONSIBLE FOR THE PERFORMANCE OF THE SERVICES AS A THIRD PARTY SERVICE PROVIDER IN ACCORDANCE WITH THE TERMS OF THIS SOW AND THE RULES AND REGULATIONS. GHX IS NOT RESPONSIBLE FOR ERRORS, ACTS OR FAILURES TO ACT OF OTHERS, INCLUDING, AND AMONG OTHER ENTITIES, BANKS, ODFI, PARTICIPATING VENDORS, COMMUNICATIONS CARRIERS OR CLEARING HOUSES THROUGH WHICH ENTRIES MAY BE ORIGINATED OR GHX MAY RECEIVE OR TRANSMIT INFORMATION, AND NO SUCH ENTITY SHALL BE DEEMED GHX'S AGENT.**
- b. **GHX IS NOT RESPONSIBLE FOR ANY LOSS, DELAY, COST OR LIABILITY WHICH ARISES, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, FROM: USER'S ACTIONS OR OMISSIONS, USER'S NEGLIGENCE OR BREACH OF ANY WARRANTY OR AGREEMENT; ANY AMBIGUITY, INACCURACY OR OMISSION IN ANY INSTRUCTION OR INFORMATION PROVIDED TO GHX.**
- c. **GHX WILL NOT BE RESPONSIBLE UNDER ANY CIRCUMSTANCES FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH USER INCURS AS A RESULT**

OF GHX'S ACTIONS OR OMISSIONS, EVEN IF GHX IS AWARE OF THE POSSIBILITY FOR SUCH DAMAGES. GHX'S AGGREGATE LIABILITY AND USER'S SOLE AND EXCLUSIVE REMEDY FOR ACTUAL COSTS AND LOSSES RESULTING FROM GHX'S ACTIONS AND/OR OMISSIONS, WHETHER THE CLAIM IS IN CONTRACT OR TORT, WILL NOT EXCEED THE ACTUAL DAMAGES INCURRED BY USER IN CONNECTION THEREWITH, OR \$10,000, WHICHEVER IS LESS. ANY CLAIM, ACTION OR PROCEEDING BY USER TO ENFORCE THE TERMS OF THIS SOW OR TO RECOVER FOR ANY SERVICE-RELATED LOSS MUST BE COMMENCED WITHIN ONE (1) YEAR FROM THE DATE THAT THE EVENT GIVING RISE TO THE CLAIM, ACTION OR PROCEEDING FIRST OCCURS FAILING WHICH USER SHALL FOREGO RIGHT TO MAKE SUCH CLAIM. USER AGREES TO COOPERATE WITH GHX IN ANY LOSS RECOVERY EFFORTS GHX MIGHT UNDERTAKE TO REDUCE ANY LOSS OR LIABILITY THAT ARISES IN CONNECTION WITH THE SERVICES.

- d. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, GHX MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY MADE IN THIS SOW. OTHER THAN AS EXPRESSLY SET FORTH ABOVE, GHX PROVIDES ALL SERVICES "AS IS." GHX DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF DATA, NONINFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WITH REGARD TO THE EXCHANGE, THE EXCHANGE SOFTWARE AND ITS USER INTERFACE. GHX DOES NOT WARRANT THAT IT WILL BE ABLE TO CORRECT ALL REPORTED DEFECTS IN THE EXCHANGE OR THAT USE OF THE EXCHANGE, ACCESS TO PRODUCT DATA OR LINKS TO OTHER SUPPLIER MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. GHX PROVIDES NO WARRANTIES WITH RESPECT TO THE FUNCTIONALITY OF THE SOFTWARE AND ITS USER INTERFACE. GHX MAKES NO WARRANTY REGARDING FEATURES, SOFTWARE OR SERVICES PROVIDED BY THIRD PARTIES.

5. **Ownership and Licenses.** For purposes of these Terms and Conditions, the definition of "Transaction Data" (as defined in the Agreement) also includes any information communicated to or by GHX to or from a System participant in connection with Transactions effectuated through the System including, without limitation, products or services purchased, price, terms of payment or order status, including summaries of such information, and payment methods and timing. As between User and GHX, User will own all Transaction Data jointly with the Participating Vendor that is a party to the transaction generating the Transaction Data, each with the right to use such Transaction Data as if it were the sole owner and without any duty to account to the other, except as may be provided in a separate agreement among the parties to such transaction. GHX may provide reports relating to Transaction Data in accordance with the instructions of either User or the Participating Vendor that is a party to a transaction giving rise to such Transaction Data. User will not issue any instructions regarding Transaction Data which would violate any agreement with a third party. GHX will be under no duty of inquiry regarding the ownership of such Transaction Data or User's right to dispose of such Transaction Data.

Notwithstanding anything to the contrary in the Agreement, User grants GHX and its affiliates a worldwide, perpetual, royalty-free license to use Transaction Data to develop and provide ongoing innovation to all of GHX's customers, including the development, marketing and sale of data and analytics tools and products. GHX will use the Transaction Data only in a manner that is anonymized and aggregated, and will take reasonable steps to ensure that the identity of User is not revealed and cannot reasonably be expected to be ascertained by anyone who receives data or reports based on such Transaction Data. User further grants GHX the right to sublicense its rights to Transaction Data provided, that each sublicense contains confidentiality provisions at least as favorable to User as those specified in the Agreement. GHX will own all aggregated and anonymized Transaction Data and all information, products, services and intellectual property rights derived from such data and the analytics, development, marketing and sales activities described above.

6. **Governing Law and Agreement to Arbitrate.** THIS SECTION SUPERSEDES ANY AND ALL

**GOVERNING LAW, VENUE, AND/OR ARBITRATION PROVISION IN THE AGREEMENT. PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS USER'S RIGHTS AND WILL IMPACT HOW CLAIMS BETWEEN USER AND GHX HAVE AGAINST EACH OTHER ARE RESOLVED.**

- a. **Governing Law.** User and GHX agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern this SOW and any claim or dispute that has arisen or may arise between the parties, except as otherwise stated in this SOW.
  - b. **Agreement to Arbitrate.** User and GHX agree that any and all disputes or claims that have arisen or may arise between User and GHX shall be resolved exclusively through final and binding arbitration, rather than in court, except that User may assert claims in small claims court, if User's claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this provision.
  - c. **THE PARTIES ALSO AGREE THAT USER AND GHX MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH USER AND GHX AGREE OTHERWISE, THE ARBITRATOR(S) MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR(S) MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER GHX USERS OR PARTICIPATING VENDORS.**
  - d. The arbitration will be conducted by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, as modified by this Agreement to Arbitrate. The AAA's rules are available at [www.adr.org](http://www.adr.org). Payment of all filing, administration, and arbitrator fees will be governed by the AAA's rules. All issues are for the arbitrator to decide, except that issues relating to arbitrability, or the scope or enforceability of this Agreement to Arbitrate, shall be for a court of competent jurisdiction to decide. If a court decides that any part of this Section is invalid or unenforceable, the other parts of this Section shall still apply.
  - e. The arbitration shall be held in Wilmington, Delaware. If the value of the relief sought is \$10,000 or less, User or GHX may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on User and GHX subject to the discretion of the arbitrator(s) to require an in-person hearing, if the circumstances warrant. In cases where an in-person hearing is held, User and/or GHX may attend by telephone, unless required otherwise by the arbitrator(s).
  - f. The arbitrator(s) will decide the substance of all claims in accordance with the laws of the State of Delaware, without regard to conflicts of law, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator(s) shall not be bound by rulings in prior arbitrations involving different merchants, but is/are bound by rulings in prior arbitrations involving the same merchant to the extent required by applicable law. The arbitration award shall be final and binding and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
7. **Survival.** The Sections titled User Indemnification, Limits of Liability and Disclaimers, and Governing Law and Agreement to Arbitrate set forth in these Terms and Conditions shall survive termination or expiration of these Terms and Conditions.

## GLOBAL HEALTHCARE EXCHANGE CARD PAYMENT TERMS GHX PROVIDER EPAY

By executing a Statement of Work or Order Form (referred to collectively herein as the “SOW”) referencing these Global Healthcare Exchange Card Payment Terms (“Card Payment Terms”) you (“you” or “User”) agree to be bound and abide by the terms and conditions herein. Each party may be referred to herein as a “party” and collectively as the “parties.” All references to User are deemed to include User’s Affiliates, as defined in the Agreement between User and GHX, defined in the SOW. These Card Payment Terms are intended to supplement the Agreement and in the event of a conflict between these Card Payment Terms, the Agreement and the SOW, these Card Payment Terms will govern, followed by the Agreement and the SOW. These Card Payment Terms apply to the processing of virtual card and credit card payments through the System, defined in the applicable SOW. Capitalized terms used, but not defined, herein shall have the definition set forth in the Agreement and applicable SOW.

- 1. Card Payment Services.** To the extent set forth in the applicable SOW, GHX shall provide you with Card Payment Services, subject to these Card Payment Terms. “Card Payment Services” means the card payment services offered by GHX which provide you with the ability to, as applicable, make payment through the System to a Participating Vendor, defined in the applicable SOW, using virtual cards and related payment methods. GHX is not a payment processor or a payment facilitator.
- 2. Restricted Activities, Representations and Warranties.** You agree that you will not (as applicable):
  - a. Breach these Card Payment Terms, your Bank Terms, or any other agreement that you have entered into with us in connection with the Card Payment Services;
  - b. Violate any federal, state, or local laws, rules, or regulations applicable to your business;
  - c. Violate any rule, guideline, or bylaw of any of the Associations (the “Association Rules”), as they may be amended by the Associations from time to time.
  - d. Fail to provide us with any information that we reasonably request about you or your business activities, or provide us with false, inaccurate or misleading information;
  - e. Refuse to cooperate in a legal investigation or audit that may be required by the Associations;
  - f. Integrate or use any of the Card Payment Services without complying with our requirements;
  - g. Utilize recurring billing functionality without properly obtaining your customers’ consent to be billed in such a manner;
  - h. Submit any Transaction for processing through the Card Payment Services which does not represent a bona fide, permissible Transaction as outlined in these Card Payment Terms and in the Association Rules, or which inaccurately describes the product or services being sold; and
  - i. Process Transactions or receive payments on behalf of any other party, or redirect payments to any other party.
- 3. Liability for Invalidated Payments and other Liabilities.** You are liable for all claims, expenses, fines and liability we incur arising out of:
  - a. Chargeback, over-payment, payment error, or other invalid payment you cause (collectively “Invalidated Payment”);
  - b. any error, negligence, misconduct or fraud by you, your employees, or someone acting on your behalf; and
  - c. any losses resulting from your failure to comply with these Card Payment Terms, or your usage of the Card Payment Services.

- 4. Actions We May Take.** If we believe that your Transactions pose an unacceptable level of risk, that you have breached the terms of these Card Payment Terms, or that your account has been compromised, we may take various actions to avoid liability. The actions we may take include, but are not limited to (as applicable), suspending or limiting your ability to use the Card Payment Services, refusing to process any Transaction, reversing a Transaction, holding or reversing your Rebates (as defined in the SOW), and contacting your customers to verify Transactions and reduce potential fraud and disputes. If possible, we will provide you with advance notice of our actions and resolution steps. However, advance notice will not be provided if there is an immediate need to take actions such as a security threat, potential fraud, or illegal activity.
- 5. Termination and Data Portability.** In addition to the termination rights set forth in the Agreement, GHX may terminate these Card Payment Terms or suspend services to you if any of the following occurs: (a) GHX is required by the Associations, the acquiring bank, or an order from a regulatory body to cease providing services to you; (b) we believe that you have breach these Card Payment Terms or the Agreement or are likely to do so; if we determine that your use of the Card Payment Services carries an unacceptable amount of risk, including credit or fraud risk; or (d) any other legal, reputational, or risk-based reason exists, in GHX' sole discretion. In the event GHX must terminate these Card Payment Terms, GHX shall provide you with written notice as soon as reasonably practicable and in compliance with applicable laws. After termination, you shall no longer have access to, and shall cease use of, the Card Payment Services. Any termination of these Card Payment Terms does not relive you of any obligations to pay any fees, costs, penalties, Chargebacks or any other amounts owed by you to us as provided hereunder, whether accrued prior to or after termination.
- 6. Definitions.**

  - a. "Associations"** means, collectively, Visa, Mastercard, Discover, American Express, any ATM or debit network, and the other financial service card organizations.
  - b. "Bank Terms"** means the agreement provided by the financial institution that is providing the acquiring services.
  - c. "Chargeback"** means a challenge to a payment that you file directly with your credit or debit card issuer.
  - d. "Transaction"** means a transfer of funds between you and a third party related to the sale of goods and/or services.